

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CAROLYN PIMENTAL <i>formerly known as</i>	)
CAROLYN IGOE,	)
Plaintiff,	)
	)
v.	)
	)
WACHOVIA MORTGAGE CORPORATION	)
<i>formerly known as</i> FIRST UNION MORTGAGE	)
CORPORATION	)
Defendant.	)

CIVIL ACTION NO.:  
1:05-cv-11097 (WGY)

**MOTION TO DISMISS**

Defendant Wachovia Mortgage Corporation ("Wachovia") moves, pursuant to *Fed. R. Civ. P.* 12 (b) (6), to dismiss the *First Amended Complaint And Jury Claim* (the "*Amended Complaint*") for failure to state a claim upon which relief can be granted.

Plaintiff asserts Wachovia: (1) breached its contract with plaintiff; (2) was negligent; and (3) violated *Mass. Gen. Laws*, ch. 93A, in connection with a certain site/building inspection undertaken in furtherance of a construction mortgage given by plaintiff to Wachovia. Specifically, she asserts that, in essence, Wachovia advanced more of the loans proceeds than the progress or the quality of the construction dictated were prudent.

Wachovia respectfully contends the *Amended Complaint* fails to state a claim upon which relief can be granted because, on the face of the *Amended Complaint*, it is clear Wachovia's actions do not give rise to a breach and, further, because Wachovia does not owe a duty to plaintiff. In addition, plaintiff's contract with Wachovia specifically acknowledged the non-viability of the precise claims now at issue. Finally, inasmuch as plaintiff's Chapter 93A claim is

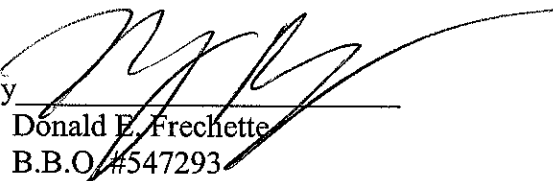
premised on her breach of contract and negligence allegations, the Chapter 93A claim must, for the foregoing reasons, similarly be dismissed.

In further support of its claims, Wachovia respectfully incorporates its accompanying memorandum of law.

**THE DEFENDANT  
WACHOVIA MORTGAGE  
CORPORATION**

June 7, 2005

By

  
Donald E. Frechette  
B.B.O. #547293

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**REQUEST FOR ORAL ARGUMENT**

Pursuant to *Local Rule 7.1*, Wachovia requests oral argument on its motion.

  
Nicholas J. Rosenberg

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

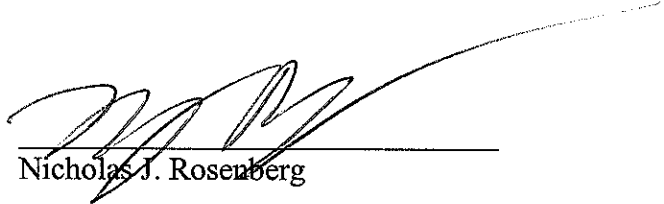
Pursuant to *Local Rule 7.1* of the *Local Rules of the United States District Court for the District of Massachusetts*, I, Nicholas J. Rosenberg, certify that on June 3, 2005, Donald E. Frechette of Edwards & Angell, LLP spoke with opposing counsel and informed him of the substance of the within motion, and the likelihood that this motion would be filed. The parties respectfully disagreed with respect to the merits of this motion and were thus unable to further resolve or narrow the issues herein presented.

  
Nicholas J. Rosenberg

**CERTIFICATION**

This is to certify that on this 7th day of June, 2005, a copy of the foregoing was mailed, first class, postage prepaid, to:

John H. Malloy, Esq.  
385 Broadway, Suite 402  
Revere, MA 02151  
(781) 284-9934 (phone)  
(781) 284-5301 (fax)



Nicholas J. Rosenberg